

# CROSSROADS BANK

## MASTER EQUIPMENT LEASE-PURCHASE AGREEMENT

Master Agreement Date: May 12, 2015

LESSEE: City of West Lafayette, Indiana  
711 West Navajo Street  
West Lafayette, Indiana 47906

LESSOR: Crossroads Bank  
1205 N. Cass Street  
Wabash, IN 46992

For and in consideration of the mutual promises and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** Unless the context otherwise clearly requires, the following terms shall have the respective meaning set forth below for all purposes of this Agreement, each Schedule and each Lease:

*"Additional Payments"* means any amounts (other than Rental Payments) required to be paid by Lessee pursuant to the terms of each Lease.

*"Agreement"* means this Master Equipment Lease-Purchase Agreement, as supplemented and amended from time to time as herein provided.

*"Certificate of Acceptance"* means, with respect to each Schedule, a certificate that Lessee delivers to Lessor upon Lessee's receipt and acceptance of the Equipment described in such Schedule and pursuant to which Lessor is directed by Lessee to, and against which Lessor does, allocate funds to pay the Purchase Price for such Equipment. Each Certificate of Acceptance with respect to a Schedule shall be in substantially the form attached as *Exhibit 5* to such Schedule, shall be completed, executed and delivered by Lessee to Lessor as provided in Paragraph 9 of this Agreement and shall have a Rental Payment Schedule and, with respect to a Tax-Exempt Lease only, I.R.S. information reporting return attached thereto.

*"Code"* means the Internal Revenue Code of 1986, as amended. Each reference to a section of the Code herein shall be deemed to include the United States Treasury Regulations proposed or in effect thereunder.

*"Equipment"* means (a) the equipment, vehicles, computer hardware and software (subject to any applicable software license agreement) and other tangible and intangible personal property (including maintenance and other support service agreements) identified in each Schedule, (b) any property acquired in substitution, renewal, repair or replacement for or as additions, improvements, accessions and accumulations to any of such equipment, vehicles, computer hardware and software and other personal property and (c) any accessories, parts and appurtenances appertaining or attached to any of such equipment, vehicles, computer hardware and software and other personal property or from time to time incorporated therein or installed thereon.

*"Event of Default"* is defined in Paragraph 24 of this Agreement.

*"Event of Nonappropriation"* means a nonrenewal of the term of a Lease by Lessee, determined by the failure or refusal of the governing body of Lessee to appropriate monies

sufficient to pay the Rental Payments and reasonably estimated Additional Payments for the next succeeding Renewal Term as provided in such Lease.

*"Fiscal Period"* means the annual or biennial period used from time to time by Lessee for its financial accounting and budgeting purposes.

*"Initial Term"* means, with respect to each Lease, the period determined as provided in Paragraph 3 hereof.

*"Lease"* means, collectively, (a) a Schedule and the terms of this Agreement which are incorporated by reference into such Schedule, (b) the Certificate of Acceptance relating to such Schedule, together with the Attachments to such Certificate of Acceptance, and (c) each Addendum that describes this Agreement or the Lease to which such Addendum relates.

*"Legally Available Funds"* means funds that the governing body of Lessee duly appropriates or are otherwise legally available for the purpose of making Payments under each Lease.

*"Lessee"* means the entity referred to as Lessee in the heading for this Agreement.

*"Lessor"* means (a) the entity referred to as Lessor in the heading for this Agreement or (b) any assignee or transferee of any right, title or interest of Lessor in and to any Lease (including Rental Payments and the Equipment thereunder) pursuant to Paragraph 27 hereof, but does not include any entity solely by reason of that entity retaining or assuming any obligation of Lessor to perform under any Lease.

*"Net Proceeds"* means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

*"Payments"* means, with respect to each Lease, the Rental Payments and the Additional Payments thereunder, collectively.

*"Prepayment Option Amount"* means, with respect to each Lease, the amount determined pursuant to such Lease at which Lessee may prepay the aggregate principal component of Rental Payments thereunder on any Rental Payment date provided in such Lease for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" on the related Rental Payment Schedule prior to the scheduled payment of all Rental Payments to be paid under such Lease for the Equipment therein identified.

*"Purchase Price"* means, with respect to each Schedule, the total cost of the Equipment described in the Certificate of Acceptance related to such Schedule, including all delivery charges, installation charges, capitalizable consulting and training fees, legal fees, financing costs, motor vehicle

registration fees, recording and filing fees and other costs necessary to vest full, clear legal title to such Equipment in Lessee, subject to the security interest granted to and retained by Lessor as set forth in the related Lease, and otherwise incurred in connection with the financing provided by the lease-purchase of the Equipment as provided in such Lease.

*"Renewal Term"* means, with respect to each Lease, each successive period, in addition to the applicable Initial Term, that is coextensive with Lessee's Fiscal Period and for which Lessee has extended the term of such Lease as provided therein.

*"Rental Payments"* means, with respect to each Lease, the amounts (allocable with respect to a Tax-Exempt Lease to a principal component and an interest component) payable by Lessee pursuant to such Lease, as payments for the installment financing of the Purchase Price for the Equipment as set forth in such Lease.

*"Rental Payment Schedule"* means, with respect to each Lease, the schedule of Rental Payments due with respect to the funds allocated for the payment of the Purchase Price under such Lease by Lessor at Lessee's direction pursuant to the related Certificate of Acceptance, calculated as provided in the related Schedule and attached as *Attachment 1* to such Certificate of Acceptance.

*"Schedule"* means a Lease Schedule that may be executed by Lessor and Lessee from time to time pursuant to this Agreement and, in the case of a Tax-Exempt Lease in substantially the form attached to this Agreement as *Schedule A-1* or, in the case of a Taxable Lease, in substantially the form attached to this Agreement as *Schedule A-2*, together in each case with the Exhibits attached to each such Schedule.

*"Schedule Funding Date"* means the date identified by Lessor in its Acknowledgment to a Certificate of Acceptance on which Lessor allocated funds for the payment of the Purchase Price under the related Schedule at Lessee's direction.

*"State"* means the State under whose laws Lessee exists or is organized.

*"Taxable Lease"* means a Lease that is not a Tax-Exempt Lease.

*"Tax-Exempt Lease"* means a Lease for which the interest component of Rental Payments is excludible from gross income of the owner or owners thereof for federal income tax purposes.

*"Vendor"* means the manufacturer, seller or supplier of the Equipment and the agents or dealers of the manufacturer, seller or supplier from whom Lessee acquired and Lessor financed the Equipment pursuant to the applicable Schedule.

**2. Agreement to Lease-Purchase Equipment Under Each Lease.** Lessee hereby agrees to acquire, purchase and lease all the Equipment identified in each Schedule that may from time to time be executed by Lessor and Lessee pursuant hereto, and Lessor hereby agrees to lease the Equipment under each Schedule to Lessee, all on the terms and conditions set forth in this Agreement and the related Lease. Each Schedule executed and delivered by Lessor and Lessee pursuant to this Agreement and the related Certificate of Acceptance (including the Attachments thereto) shall constitute a separate and independent Lease.

This Agreement is not a commitment by Lessor to Lessee or to any Vendor to enter into any Schedule not currently in effect unless Lessee shall execute and deliver to Lessor a completed Schedule together with all exhibits thereto each in form and substance and with terms acceptable to Lessor (in the exercise of its sole discretion) and only so long as the financial condition or affairs of Lessee shall not have changed so as in the sole opinion of Lessor, to impair the credit risk to Lessor of the transaction contemplated by such Schedule.

Each Schedule, upon its execution by Lessor and Lessee, shall constitute a commitment by Lessor to finance Lessee's installment purchase and leasing of the Equipment therein described on the terms and subject to the conditions provided in such Schedule, and shall constitute a commitment by Lessee to obtain such financing from Lessor, but nothing in this Agreement or in such Schedule shall obligate Lessor to allocate funds for the payment of the Purchase Price under the related Lease as directed in any Certificate of Acceptance unless Lessee shall complete, execute and deliver to Lessor a Certificate of Acceptance with respect to Equipment at a Purchase Price and with Vendors acceptable to Lessor (in the exercise of its sole discretion) and only so long as the financial condition or affairs of Lessee shall not have changed so as, in the sole opinion of Lessor, to impair the credit risk to Lessor of the transaction contemplated by such Certificate of Acceptance; *provided, however*, that Lessor's approval of or failure to object to any Vendor shall not constitute or imply any representation by Lessor with respect to the quality or reliability of such Vendor.

***This Agreement and any Schedule are, and in the case of a Certificate of Acceptance may be, entered into solely for the benefit of Lessor and Lessee and not for the benefit of any third party including (without limitation) any Vendors.***

**3. Term.** The term of this Agreement begins as of the Master Lease Date set forth above and will continue so long as any amount remains unpaid under a Lease. The Initial Term of each Lease begins as of the Schedule Funding Date identified by Lessor in the Certificate of Acceptance relating to such Lease and expires at midnight on the last day of Lessee's current Fiscal Period during which such Schedule Funding Date occurs. Beginning at the expiration of the applicable Initial Term, the term of each Lease shall automatically be extended upon the successive appropriation by Lessee's governing body of amounts sufficient to pay Rental Payments and reasonably estimated Additional Payments during the next succeeding Renewal Term in the number of Renewal Terms, each coextensive with Lessee's Fiscal Period, as are necessary for all Rental Payments identified in the pertinent Rental Payment Schedule to be paid in full, unless such Lease is terminated as provided therein.

The term of each Lease will expire upon the first to occur of:

(a) the expiration of the Initial Term or any Renewal Term under such Lease during which an Event of Nonappropriation occurs,

(b) the day after the last scheduled Rental Payment under such Lease is paid in full,

(c) the day after the Prepayment Option Amount under such Lease is paid in full or

(d) an Event of Default under such Lease and a termination of Lessee's rights thereunder as provided therein.

**4. Rental Payments.** Lessee hereby agrees to pay Rental Payments for the Equipment identified in each Lease (but only from Legally Available Funds) to Lessor at Lessor's mailing address set forth above (or at such other address as may be designated from time to time pursuant to Paragraph 27 or 30 hereof) in the amounts provided in the pertinent Rental Payment Schedule. Rental Payments made by check will be accepted subject to collection.

*Lessee's obligation to make Rental Payments and to pay any Additional Payments payable under each Lease constitutes a current obligation payable exclusively from Legally Available Funds and shall not be construed to be an indebtedness within the meaning of any applicable constitutional or statutory limitation or requirement. Lessee has not pledged its full faith and credit or its taxing power to make any Rental Payments or Additional Payments under any Lease.*

**5. Agreement to Seek Appropriations; Notice of Event of Nonappropriation.** Lessee agrees that its primary business official will do all things lawfully within such official's power (a) to include amounts to make Payments under each Lease in each annual or biennial budget (as appropriate) to be submitted to Lessee's governing body and (b) to use best efforts to obtain and maintain funds from which Payments under each Lease may be made during each Fiscal Period for which amounts have been duly appropriated to make Payments. Lessee hereby agrees to notify Lessor immediately (and in no case later than thirty (30) days prior to the last day of its then current Fiscal Period) of the occurrence of an Event of Nonappropriation under any Lease.

**6. Prepayment Option.** Lessee is granted the option pursuant to the applicable Lease to prepay the aggregate principal component of Rental Payments (in whole but not in part) identified in such Lease, prior to the scheduled payment of the Rental Payments in full pursuant to such Lease, on each Rental Payment date for which a Prepayment Option Amount is identified under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Rental Payment Schedule. Such prepayment amount shall equal the Prepayment Option Amount (assuming that all Rental Payments and Additional Payments due under such Lease on and prior to the prepayment date have been paid) shown for the Rental Payment date on which such prepayment is to be effective under the column titled "PREPAYMENT OPTION AMOUNT" in the applicable Rental Payment Schedule. The aggregate principal component of Rental Payments may not be prepaid in whole or in part on any day prior to the first Rental Payment Date for which a "PREPAYMENT OPTION AMOUNT" is shown in the applicable Rental Payment Schedule, and the Prepayment Option Amount shown on any Rental Payment Schedule may include an amount representing premium.

To exercise the option provided in this Paragraph 6 and granted in a Lease, Lessee shall give Lessor a written notice exercising such option and designating the affected Lease, the Rental Payment date on which such prepayment is to be effective and the applicable Prepayment Option Amount,

which notice shall be delivered to Lessor at least thirty (30) days in advance of the proposed prepayment date. Such prepayment option may be exercised by Lessee with respect to a Lease whether or not one or more Events of Default have occurred and are then continuing under such Lease at the time of such exercise; *provided, however*, that the prepayment of such principal component of Rental Payments under the applicable Lease upon the exercise of such option during the continuance of an Event of Default thereunder shall not limit, reduce or otherwise affect liabilities or obligations that Lessee has incurred as a result of such Event of Default or otherwise terminate the term of the affected Lease notwithstanding anything in such Lease to the contrary.

Immediately upon any such prepayment being made, Lessor shall execute all documents reasonably necessary to confirm in Lessee title in and to the Equipment under the affected Lease free and clear of any lien, encumbrance or other interest created by Lessor, but without warranties and in "where-is, as-is" condition, and release Lessor's security interest in such Equipment and shall deliver such documents to Lessee. Lessor shall further cooperate in providing for the filing of any necessary releases, termination statements or other similar documents and the release of certificates of title or certificates of origin to Lessee.

**7. Essentiality.** Lessee's present intention is to make Rental Payments and Additional Payments under each Lease for the Initial Term and all Renewal Terms applicable thereto as long as it has Legally Available Funds. In that regard, Lessee represents with respect to each Lease that (a) the use and operation of the Equipment under each Lease is essential to its proper, efficient and economic governmental operation and (b) the functions performed by the Equipment under each Lease could not be transferred to other equipment available for its use.

**8. Nonsubstitution.** If Lessor terminates a Lease pursuant to Paragraph 25 or an Event of Nonappropriation occurs with respect to a Lease, Lessee agrees, to the extent not prohibited by law, not to purchase, lease, rent or otherwise acquire equipment performing functions similar to those performed by the Equipment described in such Lease or obtain from any source the services or information that the Equipment described in such Lease was to perform or provide, in each case for a period equal to the shorter of (a) the longest period (if any) permitted by State law for such purpose or (b) 360 days after such termination or occurrence.

**9. Delivery and Installation.** Lessee shall select the type, quantity and Vendor of each item of Equipment designated in a Schedule. Once Lessor and Lessee have executed the related Schedule, Lessee (as Lessor's agent for this purpose) shall then order the Equipment identified in such lease from such Vendor. Any existing purchase order at the time a Schedule is executed for any portion of the Equipment therein identified and any purchase order thereafter executed shall be deemed to be executed by Lessee in its capacity as Lessor's agent for purposes of such Schedule. Lessor shall have no liability for any delay in delivery or failure by the Vendor to deliver any Equipment under any Schedule or to fill any purchase order or meet the conditions thereof. Lessee, at its expense, will pay or cause the Vendor to pay all transportation, packing, taxes,



duties, insurance, installation, testing and other charges relating to the Equipment under each Schedule. As soon as practicable after Lessee's receipt and installation of all Equipment identified in a Schedule, Lessee shall deliver to Lessor a Certificate of Acceptance relating thereto. Execution of a Certificate of Acceptance with respect to the Equipment identified in a Schedule by any employee, official or agent of Lessee having authority in the premises or having managerial, supervisory or procurement duties with respect to equipment of the same general type as the Equipment describe in such Certificate of Acceptance shall constitute acceptance of such Equipment on behalf of Lessee. If Lessee delivers a completed and executed Certificate of Acceptance to Lessor that is in form and substance acceptable to Lessor and satisfies the conditions for allocation of funds for the payment of the Purchase Price under the related Lease, including those provided in the third paragraph of Paragraph 2 of this Agreement, Lessor shall within five (5) business days allocate such funds as directed by Lessee in such Certificate of Acceptance, complete and execute the Acknowledgment of Lessor included in such Certificate of Acceptance and calculate and prepare the Rental Payment Schedule to be attached to such Certificate of Acceptance all of which shall constitute and be part of the related Lease.

Lessee understands and agrees that neither the Vendor of any Equipment under any Schedule or related purchase order nor any salesman or other agent of any such Vendor is an agent of Lessor. No salesman or agent of the Vendor of any Equipment under any Schedule or related purchase order is authorized to waive or alter any term or condition of any such Schedule or related purchase order, and no representation as to Equipment or any other matter by the Vendor of any Equipment under any Schedule or related purchase order shall in any way affect Lessee's duty to pay the Rental Payments under the related Lease and perform its other obligations as set forth in such Lease. Lessee hereby acknowledges that it has or will have selected the Equipment identified in each Schedule using its own criteria and not in reliance on any representations of Lessor.

**10. Disclaimer of Warranties.** LESSOR, NOT BEING THE MANUFACTURER, SELLER OR SUPPLIER OF ANY OF THE EQUIPMENT UNDER ANY SCHEDULE, NOR A DEALER IN ANY OF SUCH EQUIPMENT, HAS NOT MADE AND DOES NOT MAKE ANY WARRANTY, REPRESENTATION OR COVENANT, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATEVER, INCLUDING BUT NOT LIMITED TO: THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE DESIGN OR CONDITION OF THE EQUIPMENT, THE QUALITY OR CAPACITY OF THE EQUIPMENT, THE WORKMANSHIP IN THE EQUIPMENT, COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENT OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO, PATENT INFRINGEMENT OR LATENT DEFECTS. NOTHING HEREIN SHALL MODIFY LESSEE'S RIGHTS AGAINST THE VENDOR OF ANY EQUIPMENT. Lessee accordingly agrees not to assert any

claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for any direct, indirect, consequential, incidental or special damages or loss of any classification. Lessor shall have no obligation to install, erect, test, adjust, service or maintain any Equipment under any Lease. Lessee shall look solely to the manufacturer, seller and/or supplier for any and all claims related to any and all of the Equipment. **LESSEE ACQUIRES, PURCHASES AND LEASES THE EQUIPMENT "WHERE-IS, AS-IS" AND "WITH ALL FAULTS."**

Lessor hereby acknowledges that, so long as no Event of Default or Event of Nonappropriation has occurred and is continuing under a Lease, the warranties (if any) of the manufacturer, seller and/or supplier of the Equipment under such Lease are for the benefit of Lessee.

**11. Title to Equipment.** During the term of each Lease, title to the Equipment identified therein shall be vested in Lessee subject to the rights of Lessor under such Lease, unless Lessor terminates such Lease pursuant to Paragraph 25 hereof as provided in such Lease or an Event of Nonappropriation occurs with respect to such Lease, in which event title to the Equipment identified in such Lease shall immediately vest in Lessor free and clear of any right, title or interest of Lessee. Lessee, at its expense, will protect and defend Lessee's title to the Equipment identified in each Lease and Lessor's rights and interests therein and will keep the Equipment under each Lease free and clear from any and all claims, liens, encumbrances and legal processes of Lessee's creditors and other persons. All items of Equipment shall at all times be and remain personal property notwithstanding that any such Equipment may now or hereafter be affixed to realty.

**12. Tax Covenants Applicable Only to Tax-Exempt Leases; Tax Indemnity Payments.** Lessee agrees that it will not take any action that may cause the interest component of Rental Payments under any Tax-Exempt Lease to be or to become includible in the gross income of the owner or owners thereof for federal income tax purposes, nor will it omit to take or cause to be taken, in a timely manner, any action, which omission may cause the interest component of Rental Payments under any Tax-Exempt Lease to be or to become includible in the gross income of the owner or owners thereof for federal income tax purposes. Lessee agrees to execute and deliver to Lessor, upon Lessor's request, a tax certificate and agreement in form and content acceptable to Lessor, relating to the establishment and maintenance of the excludability from gross income of the interest component of Rental Payments under any Tax-Exempt Lease for federal income tax purposes.

If Lessee breaches the covenant contained in this Paragraph with respect to a Tax-Exempt Lease, the interest component of Rental Payments under such Tax-Exempt Lease may become includible in gross income of the owner or owners thereof for federal income tax purposes. In such event, Lessee agrees to pay promptly after any such determination of taxability and on each Rental Payment date thereafter to Lessor an additional amount determined by Lessor to compensate such owner or owners for the loss of such excludability (including, without limitation,

compensation relating to interest expense, penalties or additions to tax), which determination shall be conclusive (absent manifest error). Notwithstanding anything herein to the contrary, any additional amount payable by Lessee pursuant to this Paragraph 12 as provided in a Tax-Exempt Lease shall be payable solely from Legally Available Funds.

It is Lessor's and Lessee's intention that each Tax-Exempt Lease not constitute a "true" lease for federal income tax purposes and, therefore, it is Lessor's and Lessee's intention that Lessee be considered the owner of the Equipment under each Tax-Exempt Lease for federal income tax purposes; *provided, however*, that nothing in this paragraph shall affect the characterization of the transactions contemplated by each Lease for State law purposes.

This Paragraph 12 shall be inapplicable and of no force or effect with respect to any Taxable Lease.

**13. Use of Equipment, Inspection and Reports.** During the term of each Lease, Lessee shall be entitled to quiet enjoyment of the Equipment identified therein and may possess and use the Equipment in accordance with such Lease, *provided* that Lessee is in compliance in all respects with the terms of such Lease and that such possession and use are in conformity with all applicable laws, any insurance policies and any installation requirements (including environmental specifications) or warranties of the manufacturer, seller and/or supplier with respect to the Equipment identified in such Lease. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment under each Lease. Lessor shall have the right, upon reasonable prior notice to Lessee and during regular business hours, to inspect the Equipment at the premises of Lessee or wherever the Equipment may be located. Lessee shall promptly notify Lessor of any alleged encumbrances on the Equipment identified in any Lease or any accident allegedly resulting from the use or operation thereof or any claim relating thereto.

During the term of each Lease and at Lessor's request, Lessee shall provide Lessor, no later than ten (10) days prior to the end of each Fiscal Period (commencing with the Lessee's first Fiscal Period during which a Schedule Funding Date occurs), with current budgets or other proof of appropriation for the ensuing Fiscal Period and such other information relating to Lessee's ability to continue the term of each Lease for the next succeeding Renewal Term as may be reasonably requested by Lessor.

During the term of each Lease and at Lessor's request, Lessee shall furnish or cause to be furnished to Lessor, at Lessee's expense, as soon as available and in any event not later than 180 days after the close of each Fiscal Period, the audited financial statements of Lessee as at the close of and for such Fiscal Period, all in reasonable detail, audited by and with the report of Lessee's auditor.

During the term of each Lease and at Lessor's request, Lessee shall promptly furnish to Lessor a list of those officials or officers of Lessee who are duly authorized to execute and deliver, for and on behalf of Lessee, this Agreement, any Schedule or any Certificate of Acceptance or otherwise perform acts and execute documents and agreements relating to any Lease.

**14. Security Agreement; Further Assurances.** To secure the performance of all of Lessee's obligations under each Schedule and the related Lease, Lessee grants to Lessor, and Lessor shall have and retain, a security interest constituting a first and exclusive lien on the Equipment delivered under each respective Lease, on all attachments, repairs, replacements and modifications thereto or therefor and on any proceeds therefrom; *provided, however*, that such grant of a security interest shall not apply with respect to any portion of Equipment consisting of computer software that is subject to a license that prohibits such grant of a security interest with respect to the licensed software. Any portion of Equipment consisting of computer software that is subject to such a prohibition in the related license shall be subject to such separate rights and remedies as may be agreed upon by Lessor and Lessee with the consent of the software licensor. Lessee agrees to execute and deliver such additional documents, including, without limitation, financing statements, certificate of title or certificates of origin (or applications therefor) noting Lessor's interest thereon, opinions of counsel, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest in the Equipment under each Lease or for the confirmation or perfection of each Lease and Lessor's rights under each Lease. Upon the occurrence of an Event of Default or an Event of Nonappropriation under a Lease or in the event that Lessee refuses or is otherwise unwilling to execute and file financing statements to which Lessor is entitled in accordance with such Lease within ten (10) days after Lessor's written request to Lessee therefor, Lessor is authorized to file financing statements signed only by Lessor in accordance with the applicable Uniform Commercial Code or signed by Lessor as Lessee's attorney-in-fact.

**15. Risk of Loss.** All risk of loss, damage, theft or destruction to each item of Equipment under each Schedule and each Lease shall be borne by Lessee. No such loss, damage, theft or destruction of the Equipment under any Lease, in whole or in part, shall impair the obligations of Lessee under any Lease (including, but not limited to, the obligation to pay Rental Payments under each such Lease when due) all of which shall continue in full force and effect subject to the terms of the applicable Lease. If (a) the Equipment or any portion thereof under a Lease is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any part thereof under a Lease is taken under the exercise of the power of eminent domain, Lessee shall immediately notify Lessor. Lessee and Lessor shall cause the Net Proceeds of any insurance claim or condemnation award to be applied, at Lessor's option, to (i) the prompt repair, restoration, modification or replacement of the Equipment so affected or (ii) the payment in full of any then applicable Prepayment Option Amount. Any balance of Net Proceeds remaining after completion of such work or payment of such Prepayment Option Amount shall be paid promptly to Lessee. If the Net Proceeds are insufficient to pay the costs of such repair, restoration, modification or replacement or to pay such Prepayment Option Amount in full, Lessee shall, at Lessor's

direction, either complete the work or pay any then applicable Prepayment Option Amount in full and in either case pay any cost in excess of the amount of Net Proceeds, but only from Legally Available Funds.

**16. Insurance.** In the event that Lessee is not self-insured as hereinafter provided, Lessee, at its expense, shall throughout the term of each Lease keep the Equipment thereunder insured against theft, fire, collision (in the case of vehicles) and such other risks as may be customary for each item of Equipment in the amounts and for the coverage set forth in *Exhibit 1* to the applicable Schedule, with carriers acceptable to Lessor, under a policy or policies containing a loss payable endorsement in favor of Lessor, and affording to Lessor such additional protection as Lessor shall reasonably require. Lessee shall further, at its expense, maintain in effect throughout the term of each Lease a policy or policies of comprehensive public liability and property damage insurance in the amounts and for the coverage set forth in *Exhibit 1* to the applicable Schedule, with carriers satisfactory to Lessor. All such insurance shall name Lessor as an additional insured. The policies required hereby shall provide that they may not be canceled or materially altered without at least thirty (30) days' prior written notice to Lessor. Lessee shall deliver to Lessor copies or other evidence satisfactory to Lessor of each insurance policy and each renewal thereof. Failure by Lessor to request evidence of such insurance policies or renewals, or otherwise to verify the existence of such insurance, shall not constitute a waiver of the requirements hereof. Lessor shall have the right, on behalf of itself and Lessee, to make claim for, receive payment of and execute and endorse all documents, checks or drafts received in payment for loss or damage under said insurance policies. If Lessee is self-insured with respect to equipment such as the Equipment under a Lease, Lessee shall maintain during the term of such Lease an actuarially sound self-insurance program in form satisfactory to Lessor and shall provide evidence thereof in form and substance satisfactory to Lessor.

**17. Maintenance and Repairs.** Lessee shall use the Equipment under each Lease in a careful and proper manner, in compliance with all applicable laws and regulations and, at its expense, keep and maintain the Equipment under each Lease in good repair and working order, performing all maintenance and servicing necessary to maintain the value and utility of the Equipment, reasonable wear and tear excepted. Without the prior written consent of Lessor, Lessee shall not make any alterations, modifications or attachments to the Equipment under any Lease which cannot be removed without materially damaging the functional capabilities, economic value or utility of such Equipment.

**18. Taxes.** Unless Lessee has provided Lessor with evidence necessary to sustain an exemption therefrom, Lessee shall timely pay all assessment, license fees, taxes (including sales, use, excise, personal property, ad valorem, stamp documentary and other taxes) and all other governmental charges, fees, fines or penalties whatsoever, whether payable by Lessor or Lessee, now or hereafter imposed by any governmental body or agency on or relating to the Equipment under each Lease, the Rental Payments under each Lease or the use, registration, rental, shipment, transportation, delivery, ownership or

operation of the Equipment under each Lease and on or relating to each Lease; *provided, however*, that the foregoing shall not include any federal, state or local income or franchise taxes of Lessor.

**19. Lessor's Performance of Lessee's Obligations.** If Lessee shall fail duly and promptly to perform any of its obligations under a Lease, Lessor may, at its option, perform any act or make any payment that Lessor deems necessary for the maintenance and preservation of the Equipment under such Lease and Lessor's interests therein, including but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance. All expenses incurred by Lessor in performing such acts and all such payments made by Lessor together with late charges described in Paragraph 20 below as provided in each Lease, and any reasonable legal fees incurred by Lessor in connection therewith, shall be payable by Lessee to Lessor on demand. The performance of any act or payment by Lessor as aforesaid shall not be deemed a waiver or release of any obligation or default on the part of Lessee.

**20. Late Charges.** Should Lessee fail to duly pay any part of any Rental Payment or other sum to be paid to Lessor under a Lease (including, but not limited to, any amounts due as a result of Lessor's exercise of its rights under Paragraph 25 hereof) within ten (10) days after the date on which such amount is due under such Lease, then Lessee shall pay to Lessor late charges on such delinquent payment from the due date thereof until paid at the rate of eighteen percent (18%) per annum or the highest rate permitted by law, whichever is less.

**21. Indemnification.** Lessee assumes liability for, agrees to and does hereby indemnify, protect and keep harmless Lessor and its agents, employees, officers, directors, parents, subsidiaries and stockholders from and against any and all liabilities, obligations, losses, damage, injuries, claims, demands, penalties, actions, costs and expenses (including reasonable attorneys' fees), of whatsoever kind and nature, arising out of the use, condition (including, but not limited to, latent and other defects and whether or not discoverable by Lessee or Lessor), operation, ownership, selection, delivery, storage, leasing or return of any item of Equipment, regardless of where, how and by whom operated, or any failure on the part of Lessee to accept the Equipment under any Lease or otherwise to perform or comply with any conditions of any Lease. Lessee is an independent contractor and nothing contained in any Lease shall authorize Lessee or any other person to operate any item of Equipment so as to incur or impose any liability or obligation for or on behalf of Lessor. *Notwithstanding anything in any Lease to the contrary, any indemnity amount payable by Lessee as described in this Paragraph 21 and as provided in the applicable Lease shall be payable solely from Legally Available Funds and only to the extent authorized by law.*

**22. No Offset; Unconditional Obligation.** Each Lease is "triple net" and Lessee's obligation to pay all Rental Payments and Additional Payments under each Lease shall be absolute and unconditional under any and all circumstances subject to the terms and conditions of each Lease. Without limiting the generality of the foregoing, Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs

due to any present or future claims of Lessee against Lessor under any Schedule, any Lease, under this Agreement or otherwise; nor, except as otherwise expressly provided in a Lease, shall any Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of any failure of the Equipment under such Lease to perform in the manner or to the extent that Lessee anticipated or to achieve cost or other savings that Lessee anticipated, any defect in or damage to or loss or destruction of all or any of the Equipment under any Lease from whatsoever cause, the taking or requisitioning of the Equipment under any Lease by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment under any Lease, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Agreement, any Schedule or any Lease, or lack of right, power or authority of Lessor to enter into this Agreement, any Schedule or any Lease or any insolvency, bankruptcy, reorganization or similar proceedings by or against Lessor or Lessee or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rental Payments and Additional Payments payable by Lessee under each Lease shall continue to be payable in all events unless the obligation to pay the same shall expire or be terminated pursuant to such Lease (including upon the occurrence of an Event of Nonappropriation thereunder) or until the Equipment thereunder has been returned to the possession of Lessor as provided in such Lease (for all purposes of each Lease, any item of Equipment shall not be deemed to have been returned to Lessor's possession until all of Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, Lessee hereby waives any and all rights that it may now have or that at anytime hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender any Lease or any of the items of Equipment thereunder, except in accordance with the express terms of each Lease.

**23. Representations and Warranties of Lessee.** Lessee hereby represents and warrants to and agrees with Lessor that:

(a) Lessee is a state or a political subdivision thereof within the meaning of Section 103(c) of the Code.

(b) Lessee has the power and authority under applicable law to enter into the transactions contemplated by this Agreement, each Schedule and each Lease and has been duly authorized to execute and deliver this Agreement and each Lease and to carry out its obligations under each Schedule and each Lease.

(c) All requirements have been met and procedures have occurred in order to ensure the enforceability of this Agreement, each Schedule and each Lease, and Lessee has complied with such public bidding requirements, if any, as may be applicable to the transactions contemplated by this Agreement, each Schedule and each Lease.

(d) Lessee is not subject to any legal or contractual limitation or provision of any nature whatsoever that in any way limits, restricts or prevents Lessee from entering into this Agreement, any Schedule or any Lease or performing any of

its obligations under this Agreement, any Schedule or any Lease, except to the extent that such performance may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, known to be pending or threatened against or affecting Lessee, nor to the best knowledge of Lessee is there any basis therefor, wherein any unfavorable decision, ruling or finding would materially adversely affect the transactions contemplated by this Agreement, any Schedule, any Lease or any other agreement or instrument to which Lessee is a party and which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement, any Schedule or any Lease. All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by Lessee of this Agreement, each Schedule and each Lease or in connection with the carrying out by Lessee of its obligations hereunder and thereunder have been obtained, except with respect to annual or biennial budgeting and appropriation procedures as required by State law relating to each Lease.

(f) The entering into and performance of this Agreement, each Schedule and each Lease will not violate any judgment, order, law or regulation applicable to Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment under any Lease pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which Lessee is a party or by which it or its assets may be bound, except as provided in each Lease with respect to the granting of security interests in and to the Equipment therein described.

(g) Lessee is acquiring the Equipment under each Schedule and the related Lease for use within its geographical boundaries.

(h) The useful life of the Equipment identified in each Schedule will not be less than the stated full term of the applicable Lease, including all contemplated Renewal Terms.

(i) Lessee expects to have made sufficient appropriations or expects to have other Legally Available Funds to pay all Rental Payments due during the Initial Term under each Lease.

(j) During the five years prior to the date hereof, Lessee has not failed (for whatever reason) to appropriate amounts sufficient to pay its obligations that are subject to annual or biennial appropriation.

**24. Events of Default.** Each of the following events constitutes an "Event of Default" with respect to a Lease:

(a) Lessee fails to pay in full the Rental Payment due under such Lease on any date upon which such Rental Payment is due;

(b) Lessee fails to comply with any other agreement or covenant of Lessee under such Lease for a period of thirty (30) days following receipt of written notice of violation of such agreement or covenant and demand that such violation be remedied;

(c) Lessee institutes any proceedings under any bankruptcy, insolvency, reorganization or similar law or a receiver or similar officer is appointed for Lessee or any of its property;

(d) any warranty, representation or statement made in writing by or on behalf of Lessee in connection with such Lease is found to be incorrect or misleading in any material respect on the date made;

(e) actual or attempted sale, lease or encumbrance of any of the Equipment under such Lease or the making of any levy, seizure or attachment thereof or thereon; or

(f) any event of default occurs under any other Lease.

**25. Repossession and Lessor's Other Rights Upon Event of Default or Event of Nonappropriation.** Immediately upon the occurrence of an Event of Default under a Lease or immediately after the expiration of the Initial Term or any Renewal Term under a Lease during which an Event of Nonappropriation occurs, Lessor may terminate the affected Lease or Lessee's rights thereunder and in any such event repossess the Equipment under such Lease, which Lessee hereby agrees, at its expense, to surrender promptly to Lessor at such location in the continental United States as Lessor shall direct. Such right of repossession and other rights as specifically provided in this Paragraph 25 shall constitute the sole remedies for Lessee's failure to make payments or otherwise perform its obligations when required under a Lease. If Lessor is entitled to repossess the Equipment under a Lease, Lessee shall permit Lessor or its agents to enter the premises where the affected Equipment is then located. In the event of any such repossession, Lessee shall execute and deliver such documents as may reasonably be required to transfer title to and possession of the Equipment under the affected Lease to Lessor, free and clear of all liens and security interests to which such Equipment may have become subject.

Any termination of a Lease at Lessor's option as described in this Paragraph 25 and as provided in the applicable Lease shall take effect at the end of the Initial Term or the Renewal Term then in effect under such Lease, unless Lessor (at its option) elects to terminate such Lease on an earlier date.

Upon repossession, if the Equipment under the affected Lease is damaged or otherwise made less suitable for the purposes for which it was manufactured than when delivered to Lessee (reasonable wear and tear excepted), Lessee agrees, at its option, to: (a) repair and restore such Equipment to the same condition in which it was received by Lessee (reasonable wear and tear excepted) and, at its expense, promptly return such Equipment to Lessor (or to a location identified in a written notice to Lessee) or (b) pay to Lessor the actual costs of such repairs, restoration and return.

If Lessor terminates a Lease as described in this Paragraph 25 and as provided in the applicable Lease or an Event of Nonappropriation occurs under a Lease and Lessee continues to use the Equipment after the Initial Term or any Renewal Term under such Lease during which the Event of Default or Event of Nonappropriation occurs or if Lessee otherwise refuses to pay Rental Payments due during a Renewal Term under a Lease for which Lessee's governing

body has appropriated sufficient Legally Available Funds to pay such Rental Payments, Lessor shall, be entitled to bring such action at law or in equity to recover damages attributable to such holdover period for the Equipment subject to such Lease that Lessee continues to use or to the remainder of such Renewal Term under such Lease for which such appropriations have been made.

Lessor shall also be entitled to exercise any or all remedies available to a secured party under the applicable Uniform Commercial Code and all other rights and remedies that Lessor may have at law or in equity. Upon termination of a Lease (whether as a result of the occurrence of an Event of Default or an Event of Nonappropriation) under which the financed Equipment included computer software, the license relating to such software shall terminate and Lessee shall cease use and return such computer software as provided in the related license or otherwise.

No right or remedy conferred upon or reserved to Lessor as described herein and as provided in each Lease is exclusive of any right or remedy herein or in any Lease or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given as described herein and as provided in each Lease or now or hereafter existing at law or in equity or by statute or otherwise and may be enforced concurrently therewith or from time to time.

No waiver of or delay or omission in the exercise of any right or remedy as described herein and as provided in each Lease or otherwise available to Lessor shall impair, affect or be construed as a waiver of its rights thereafter to exercise the same. Any single or partial exercise by Lessor of any right hereunder or with respect to any Lease shall not preclude any other or further exercise of any right as described herein and as provided in each Lease. The exercise of any right or remedy herein provided with respect to a Lease shall not relieve Lessee of any other obligations under any other Lease or the Equipment identified therein.

**26. No Sale, Assignment or Other Disposition by Lessee.** Lessee agrees not to (a) sell, assign, transfer, lease, sublease, pledge or otherwise encumber or suffer a lien or encumbrance upon or against any interest in this Agreement, any Lease or the Equipment under any Lease, (b) remove the Equipment from its Equipment Location identified in the applicable Schedule or (c) enter into any contract or agreement with respect to the use and operation of any of the Equipment under any Lease by any person other than Lessee, without Lessor's prior written consent in each instance. Lessee shall at all times remain liable for the performance of the covenants and conditions on its part to be performed, notwithstanding any assigning, transferring or other conveyance that may be made with such consent. Lessee shall take no action that may adversely affect the excludability from gross income for federal income tax purposes of any portion of the interest component of the Rental Payments under any Tax-Exempt Lease.

**27. Assignment by Lessor.** Lessor may, at any time and from time to time without Lessee's consent, assign, transfer or otherwise convey all or any part of its interest in the Equipment under any Lease or any Lease, including Lessor's rights to receive the Rental Payments or any part thereof under



any Lease (in which event Lessee agrees to make all Rental Payments under the affected Lease thereafter to the assignee designated by Lessor), to terminate any Lease or Lessee's rights under any Lease and to repossess the Equipment and exercise Lessor's other rights and remedies under each Lease; *provided, however*, that any such assignment, transfer or conveyance to a trustee for the benefit of owners of certificates of participation shall be made in a manner that conforms to any applicable State law. Nothing in this Paragraph 27 shall be construed, however, to prevent Lessor from executing any such assignment, transfer or conveyance with respect to a Lease that does not involve funding through the use of certificates of participation within the meaning of applicable State law, including any such assignment, transfer or conveyance as part of a multiple asset pool to a partnership or trust interests in which are offered and sold in a private placement or limited offering only to investors whom Lessor reasonably believes are qualified institutional buyers or accredited investors within the meaning of the applicable federal securities law; *provided, however*, that in any event, Lessee shall not be required to make Rental Payments under any Lease, to send notices or to otherwise deal with respect to matters arising under any Lease with or to more than one individual or entity with respect to each Lease. No assignment, transfer or conveyance permitted by this Paragraph 27 with respect to a Lease shall be effective until Lessee shall have been given a written notice of assignment that discloses the name and address of each such assignee; *provided, however*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests with respect to the Rental Payments payable under any Lease, it shall thereafter be sufficient that a copy of the agency or trust agreement shall have been deposited with Lessee until Lessee shall have been advised that such agency or trust agreement is no longer in effect. During the term of this Agreement, Lessee shall keep, or cause to be kept, a complete and accurate record of all such assignments with respect to each Lease in form necessary to comply with Section 149 of the Code with respect to Tax-Exempt Leases and Section 165(f) of the Code with respect to Taxable Leases. Lessee agrees, if so requested, to acknowledge each such assignment in writing within fifteen (15) days after request therefor, but such acknowledgment shall in no way be deemed necessary to make any assignment effective. Lessee further agrees that any monies or other property received by Lessor as a result of any such assignment, transfer or conveyance shall not inure to Lessee's benefit.

**28. Costs.** Lessee shall pay to Lessor all costs and expenses, including reasonably attorneys' fees and costs related to repossession of the Equipment under any Lease (including, without limitation, the costs and expenses to deliver possession of the Equipment under such Lease to such location as Lessor directs pursuant to Paragraph 25 hereof) and the exercise of remedies with respect to each Lease, incurred by Lessor in enforcing any of the terms, conditions or provisions of each Lease.

**29. Severability.** If any provision of this Agreement or any Lease is or becomes invalid, illegal or unenforceable, such

invalidity, illegality or unenforceability will not affect the other provisions of this Agreement or any such Lease which shall be valid and enforceable to the fullest extent permitted by law.

**30. Notices.** All notices, reports and other documents provided for in this Agreement, any Schedule or any Lease shall be deemed to have been given when delivered or three (3) days after being mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective mailing addresses set forth above or such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

**31. Amendments.** This Agreement, each Schedule (including the Exhibits attached thereto), each Certificate of Acceptance (including the Attachments thereto) and any Addendum relating hereto constitute the entire agreement between Lessor and Lessee with respect to the Equipment therein described and the subject matter hereof and thereof. No term or provision of this Agreement, any Schedule, any Certificate of Acceptance, any such Addendum or any Lease may be changed, waived, amended or terminated except by a written agreement signed by both Lessor and Lessee except that Lessee may adjust the amount financed to the extent provided in each Schedule and Lessor may (a) adjust the annual interest rate for a Rental Payment Schedule to the extent provided in the related Schedule and (b) insert the serial number and additional description details in any Schedule of any item of Equipment after delivery thereof.

**32. Construction.** This Agreement, each Schedule and each Lease shall in all respects be governed by and construed in accordance with the laws of the State. The titles of the Paragraphs of this Agreement are for convenience only and shall not define or limit any of the terms or provisions hereof. Time is of the essence with respect to this Agreement, each Schedule and each Lease in each of their respective provisions.

**33. Parties; Survival of Certain Obligations and Indemnities.** (a) The provisions of this Agreement and each Lease shall be binding upon, and (subject to the limitations of Paragraphs 26 and 27 hereof) shall inure to the benefit of, the respective assignees and successors of Lessor and Lessee.

(b) The indemnities, assumptions of liabilities and obligations of Lessee provided for in Paragraphs 8, 12 and 21 of this Agreement and incorporated into each Lease shall continue in full force and effect notwithstanding the expiration or termination of the term of this Agreement or any applicable Lease.

**34. Original Agreement and Lease.** Lessor and Lessee shall execute and deliver only one original of this Agreement and of each Lease, each of which shall be delivered to Lessor. Lessor shall provide to Lessee a full, true and correct copy of the executed Agreement and each executed Lease. In the event that the originally executed Agreement or an originally executed Lease is lost, stolen, destroyed or mutilated and Lessor certifies such events to Lessee, Lessee shall execute and deliver to Lessor, promptly after Lessor's request and at Lessor's expense, a replacement Agreement or Lease for such original Agreement or Lease so lost, stolen, destroyed or mutilated.

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**LESSEE HEREBY ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT.**

*IN WITNESS WHEREOF*, Lessor and Lessee have each caused this Master Equipment Lease-Purchase Agreement to be duly executed and delivered as of the date first above written.

**LESSEE: City of West Lafayette, Indiana**

**LESSOR: Crossroads Bank**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Judith C. Rhodes \_\_\_\_\_

Printed Name: \_\_\_\_\_ Barry Grossman \_\_\_\_\_

Title: \_\_\_\_\_ Clerk Treasurer \_\_\_\_\_

Title: \_\_\_\_\_ Sr. Vice President \_\_\_\_\_

COPY